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8 Attorneys for Plaintiff Brad Greenspan

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 JIM BROWN, individually and on) Case No. CV-06-3731 GHK
13 behalf of all others similarly situated,) (JTLx)

14 Plaintiffs,) CLASS ACTION

15 vs.)

16 BRETT BREWER, et al.)

17 Defendants.) **NOTICE OF CONSENTED**
18) **TO MOTION FOR LEAVE**
19) **TO WITHDRAW AS**
20) **COUNSEL AND**
21) **MEMORANDUM OF**
22) **POINTS AND**
23) **AUTHORITIES IN**
24) **SUPPORT THEREOF**

25 Judge: Hon. George H. King

26 Date: September 13, 2010

27 Time: 9:30 a.m.

28 Place: Courtroom 650

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on September 13, 2010 at 9:30 a.m.,
3 or as soon thereafter as the matter may be heard in the above-entitled court
4 located at 312 N. Spring Street, Courtroom 650, Los Angeles, CA, counsel
5 for Plaintiff Brad Greenspan ("Greenspan") will move and hereby does
6 move this Court for an order permitting The Rosen Law Firm, P.A.
7 ("Rosen") to withdraw as counsel for Greenspan in the present action.

8 The following are grounds for this motion to withdraw:

9 1. Greenspan has not paid any of the agreed upon legal fees to
10 Rosen for legal work Rosen had performed in this litigation to date.

11 2. Greenspan and Rosen have not been able to agree to the terms
12 of a retainer agreement for Rosen to perform future legal services for
13 Greenspan in this litigation.

14 3. Greenspan and Rosen are unable to agree on the proper strategy
15 and direction for Greenspan to proceed in this litigation, rendering Rosen
16 unable to effectively represent Greenspan.

17 4. Rosen's withdrawal will not prejudice any other party by
18 causing any material delay to this litigation.

19 5. Indeed, all other parties have consented to this motion to
20 withdraw.

21 6. Greenspan may immediately hire another attorney or represent
22 himself *pro se*.

23 7. Rosen's withdrawal will not harm the administration of justice,
24 and will not delay the resolution of this case.

25 8. Rosen has provided numerous notices to Greenspan of the
26 present motion to withdraw.

1 9. Papers may continue to be served on Rosen until either
2 substitute counsel files a notice of appearance or Greenspan files a notice to
3 appear *pro se*, Rosen will forward all such papers to Greenspan until then.

4 This motion is based on this Notice of Motion, the Memorandum of
5 Points and Authorities attached hereto, the Declaration of Laurence M.
6 Rosen attached thereto, and upon any such other evidence and oral
7 argument as may be presented to the Court at the time of the hearing.

8
9 DATED: August 2, 2010

Respectfully submitted,

10
11 /s/ Laurence M. Rosen
12 Laurence M. Rosen (CSB# 219683)
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MEMORANDUM OF POINTS AND AUTHORITIES

The Rosen Law Firm, P.A. (“Rosen”) hereby moves this Court for an order permitting Rosen to withdraw as counsel for Plaintiff Brad Greenspan (“Greenspan”) in the present action.

Local Rule 83-2.9.2.1 requires an attorney to seek leave from the court before withdrawal. “The decision to grant or deny counsel’s motion to withdraw is within the discretion of the trial court.” *Huntington Learning Centers, Inc. v. Education Gateway, Inc.*, 2009 WL 2337863, *1 (C.D. Cal. July 28, 2009) (citing *Irwin v. Mascott*, 2004 LEXIS 28264, at *3 (N.D. Cal. Dec. 1, 2004)). The trial court often weighs the following four factors to determine whether to grant a motion to withdraw as counsel: “(1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case.” *Id.*; *Irwin v. Mascott*, 2009 WL 2337863 at *4; *Beard v. Shuttermart of Cal., Inc.*, 2008 WL 410694, *2-3 (S.D. Cal. Feb. 13, 2008); *Kassab v. San Diego Police Dep’t*, 2008 WL 251935, *1 (S.D. Cal. Jan. 29, 2008); *Taylor v. Stewart*, 20 F. Supp. 2d 882, 883-85 (E.D. Pa. 1998).

“Pursuant to Local Rule 83-3.1.2, attorneys must follow the California Code of Professional Conduct and act accordingly.” *Nedbank Intern., Ltd. v. Xero Mobile, Inc.*, 2008 WL 4814706, *1 (C.D. Cal. Oct. 30, 2008). The California Code of Professional Conduct permits withdrawal where the client (1) “render[s] it unreasonably difficult for the member to carry out the employment effectively” or (2) “breaches an agreement or obligation to the member as to expenses or fees.” Cal. Code of Prof’l Conduct R. 3-700(C)(1).

1 These factors support the withdrawal as counsel by Rosen. It is
2 practically impossible for Rosen to continue as attorney for Greenspan
3 because Greenspan and Rosen are unable to agree on any strategy or plan
4 for how to proceed and what steps to take in the litigation that he or Rosen
5 proposes. *See Nedbank Intern., Ltd. v. Xero Mobile, Inc.*, 2008 WL
6 4814706 at *2. Additionally, Plaintiff has not paid any of the legal fees that
7 he already agreed to pay Rosen for numerous hours of legal work already
8 done, and resists executing a retainer agreement pertaining to future legal
9 work to be done on Plaintiff's behalf by Rosen. *Id.*

10 Under the second factor, the Court must consider the prejudice to
11 Plaintiff Jim Brown ("Plaintiff") and Defendants that a delay in the
12 litigation would cause. *Id.* First, Plaintiff and all Defendants have
13 consented to this Motion, so it cannot prejudice the other parties even if it
14 causes a delay in the litigation, which it does not.

15 Moreover, granting Rosen's motion to withdraw as counsel, at most,
16 will only minimally delay the execution of the Court's current order for
17 Plaintiff, Defendants, and Greenspan to meet and confer on the substance of
18 Defendant's motion to exclude Greenspan from the Class. Dkt. No. 294.
19 Considering that the first complaint in this action was filed more than four
20 years ago, Dkt. No. 1, and that Rosen submitted Greenspan's Notice of
21 Appearance in this action for the first time a little over a month ago, Dkt.
22 No. 280, any delay in the litigation caused by Rosen's withdrawal as
23 Greenspan's counsel will be extremely immaterial. Regardless, Greenspan
24 may hire another attorney to represent him or may appear *pro se*
25 immediately. *See* L.R. 83-2.9.2.2 ("Individuals. When an attorney of record
26 for any reason ceases to act for a party, such party shall appear *pro se* or
27
28

1 appoint another attorney by a written substitution of attorney signed by the
2 party and the attorneys”).

3 Even if the Court finds that Rosen’s withdrawal of counsel would
4 more than minimally delay the litigation, Rosen filed Greenspan’s Notice of
5 Appearance out of good faith in haste before Greenspan paid Rosen or
6 executed a retainer agreement. Indeed Rosen’s reason for filing
7 Greenspan’s Notice of Appearance was to comply as closely as possible to
8 the Court-ordered deadline to file a notice of appearance, which had already
9 passed by the time Greenspan first discussed with Rosen his retaining Rosen
10 as counsel. *See* Notice Plan submitted as Exhibit B to the Joint Motion to
11 Approve the Form and Manner of Class Notice. Docket No. 231-2.

12 As to the third and fourth factors, without a doubt granting this
13 motion will not harm the administration of justice, and will not delay the
14 resolution of this case. As stated above, Plaintiff and Defendants have
15 consented to this Motion.

16 Based on the foregoing grounds, Rosen requests that this Court grants
17 its motion and order for Rosen to withdraw as counsel to Greenspan in this
18 action, effective immediately.

19 DATED: August 2, 2010

20 Respectfully submitted,

21
22 /s/ Laurence M. Rosen
23 Laurence M. Rosen (CSB# 219683)
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PROOF OF SERVICE

I, the undersigned, declare:

I am employed at The Rosen Law Firm, P.A. in the County of New York, New York. I am over the age of eighteen and not a party to the within action; my business address is 350 Fifth Avenue, Suite 5508, New York, NY 10118.

On August 2, 2010, I electronically filed the following documents with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to CM/ECF participants, and I served the following documents on the individuals listed on the attached Service List via U.S. mail, in accordance with the Federal Rules of Civil Procedure and the Court's Local Rules:

NOTICE OF CONSENTED TO MOTION AND CONSENTED TO MOTION FOR LEAVE TO WITHDRAW AS COUNSEL AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF;

DECLARATION OF LAURENCE M. ROSEN IN SUPPORT OF CONSENTED TO MOTION FOR LEAVE TO WITHDRAW AS COUNSEL;

[PROPOSED] ORDER FOR THE ROSEN LAW FIRM, P.A. TO WITHDRAW AS COUNSEL FOR PLAINTIFF BRAD GREENSPAN.

1 I certify under penalty of perjury under the laws of the United States
2 of America that the foregoing is true and correct.

3 Executed August 2, 2010 in New York, NY.
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6 /s/ Laurence Rosen
7 Laurence Rosen
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